

National Treasury Employees Union



**TESTIMONY OF
NATIONAL TREASURY EMPLOYEES UNION
NATIONAL PRESIDENT COLLEEN M. KELLEY**

ON

**THE ROLE OF FEDERAL EMPLOYEES IN MAINTAINING
AIRPORT SECURITY**

TO THE

**HOUSE GOVERNMENT REFORM SUBCOMMITTEE ON THE
FEDERAL WORKFORCE AND AGENCY ORGANIZATION**

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Chairman Porter, Ranking Member Davis, distinguished members of the Subcommittee, I would like to thank the Subcommittee for the opportunity to comment on personnel issues at Customs and Border Protection affecting airport security.

As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 150,000 federal employees, including over 12,000 Customs employees, who work at seaports, land crossings and airports. The creation of the Department of Homeland Security (DHS) has moved the issue of the role of federal employees in airport security and their need for adequate pay and staffing levels to the forefront of the national agenda. I commend you, Mr. Chairman, for holding this important hearing.

As members of this committee are aware, on March 1, 2003, the Bureau of Customs and Border Protection (CBP) became an official agency of the DHS. The CBP combines over 42,000 federal employees from the Customs Service, the Immigration and Naturalization Service (INS), Border Patrol and Agriculture Department. The focus of this front-line law enforcement bureau is the movement of goods and people across our borders and to prevent illegal entry into the U.S. of people or goods at or between ports-of-entry while facilitating the movement of legitimate trade and international travel. I wish to address three aspects of Customs and Border Protection employees at airports.

CBP Understaffing at Airports

First let me comment on the severe security risks our nation takes by understaffing. Customs and Border Protection has two overarching and sometimes conflicting goals: increasing

security while facilitating trade and travel. NTEU has noted the diminution of secondary inspection in favor of passenger facilitation at primary inspection since the creation of the Department of Homeland Security. Why has there been this decrease in secondary inspections? NTEU believes that it is because of a decrease in CBP staffing levels. According to **GAO-05-663: International Air Passengers Staffing Model for Airport Inspections Personnel Can Be Improved**, July 2005, there is much evidence that airports are experiencing staffing shortages. This report was prepared at the request of the Subcommittee on Immigration, Border Security and Claims, Committee on Judiciary.

There has been expressed to NTEU and Congress considerable concern about clearing international passengers within 45 minutes which is being done at the expense of specialized secondary inspection. Prior to 9/11 there was a law on the books requiring INS to process incoming international passengers within 45 minutes. The Enhanced Border Security and Visa Protection Act of 2002 repealed the 45 minute standard, however “it added a provision specifying that staffing levels estimated by CBP in workforce models be based upon the goal of providing immigration services within 45 minutes (page 12-13).”

On pages 16-19, GAO states “The number of CBP staff available to perform primary inspections is also a primary factor that affects wait times at airports...(Note: the number of CBP officers at individual airports is considered security sensitive information)....For example, CBP and airline officials in Houston stated that the increase in the number of inspection stations at George Bush Intercontinental Airport, in combination with the addition of new CBP officers has

reduced passenger wait times...However, the benefit of adding inspection stations has been limited because, as of June 2003, CBP has not increased staffing levels.”

Regarding the building of new inspection station, GAO states, “Airport and airline officials said that these projects were planned, funded, and completed with the expectation that CBP would increase staff for the new facilities as passenger volume increased. However, CBP officials stated that the agency is not legally or contractually required to allocate new staff when inspection facilities are constructed or expanded and the agency is to make no commitment implicitly or explicitly regarding the future staffing levels in approving new inspection facility design proposals. (page 21)

The report states that “CBP does not systematically assess the number of staff required to accomplish its mission at ports or airports nationwide or assure that officers are allocated to airports with the greatest need...CPB is developing a staffing model...however the new model...will not be used to assess optimal level of staff to ensure security while facilitating travel at individual port and port facilities, including airports. CBP officials told us that because...it is unlikely that additional inspection personnel will be forthcoming in the current budget climate...CBP’s planned model is to determine which ports have positions that can be relocated to other ports through attrition; efforts to assess optimal staff levels would not be useful in the current budget environment.” (pages 25-29)

GAO observes that by “not identifying optimal staffing levels prevent CBP from performing workforce gap analyses, which could be used to justify budget and staffing

requests.” This is information Congress needs in order to perform its oversight and appropriations function. CBP states that “absent additional resources, the only way to address these gaps would be to relocate officers...this is not a viable solution because of the costs associated with relocating CBP officers.” (page 29)

So, instead of seeking additional resources from Congress to perform their priority mission, “CBP officials stated that they have not assessed overall staffing needs across ports or airports and do not plan to do so with the proposed model because they do not expect to receive any additional resources given the current budget climate.” (page 28)

Finally, CBP has not met the original deadline of April 2005 for completing the proposed staffing model. It may be worthwhile for Congress to intervene at this point and seek CBP to include overall staffing needs in this model or some oversight in reviewing how CBP is conducting staff allocations.

LAW ENFORCEMENT STATUS

Second, let me address the issue of law enforcement officer status for CBP officers. Within the CBP there are two classes of federal employees, those with law enforcement officer status and its benefits and those without. Unfortunately, Customs Inspectors, Canine Enforcement Officers and INS Officers fall into the latter class and are therefore being denied the benefits given to other federal employees in the CBP who they work with at 307 ports-of-entry across the country including every international airport.

A remedy to this situation exists in an important piece of legislation involving the definition of law enforcement officer introduced in this Congress -- HR 1002-The Law Enforcement Officers Equity Act of 2005. NTEU strongly supports this bipartisan legislation introduced by Representatives Bob Filner (CA) and John McHugh (NY). This legislation would include CBP Officers along with those with a limited number of others with similar duties in other federal agencies as law enforcement officers for the purpose of 20-year retirement. As I will describe in greater detail in the remaining portions of my testimony, the record will clearly support the inclusion of all these employees under the early retirement provisions for federal law enforcement officers.

HISTORY OF FEDERAL LAW ENFORCEMENT OFFICER STATUS

To better understand why it is so important to include CBP Officers as law enforcement officers you need to look at the history of providing special retirement provisions for federal law enforcement officers which dates back to 1947, when such benefits were given to agents at the Federal Bureau of Investigation. These retirement provisions were expanded in 1948 to cover any officer or employee whose duties are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States. Title 5 U.S.C. section 8336 (c)(1) allows law enforcement officers who fall under this definition to retire from the federal government at age 50 after 20 years of service. The law was amended in 1972 to include firefighters. Congress has found that the work of federal law enforcement officers and firefighters is extremely physically demanding -- far more taxing and dangerous than most jobs in the federal government. Further, Congress believed that the public interest is

served when these jobs are held by younger men and women capable of meeting the intense physical demands of such difficult work.

NTEU believes that CBP Officers should receive the same twenty-year retirement option as other law enforcement officers. Every day, the men and women who hold these jobs face enormous physical challenges and constant stress. Their job duties regularly expose them to the threat of injury or even death. This is dangerous work with real and unrelenting hazards. For the safety of these officers and for the sake of the public they serve, NTEU believes that a twenty-year retirement option as included in HR 1002 is wise public policy.

MISSIONS OF CBP

CBP Officers remain a front line law enforcement agency, with the primary missions of stopping terrorism and the flow of illegal drugs into the United States. They enforce federal criminal laws and seize fugitives who are subject to state and federal warrants and are responsible for stopping sophisticated and dangerous -- narcotics smugglers, international money-launderers, arms smugglers, terrorists, and fugitives from justice who pose serious threats to the United States. Customs inspectors use a variety of investigative tools to perform their duties, including aircraft and personal searches and direct interrogation. They search aircraft, travelers and baggage for violations of civil and criminal laws at every international airport. The inspectional ranks of Customs continue to seize more illegal narcotics than all other federal agencies combined year after year.

LAW ENFORCEMENT DUTIES OF CBP EMPLOYEES

The work of Customs Inspectors and CEO's involves substantial physical risks and personal danger. According to the FBI's 2001 Uniform Crime Report, 52 Customs officers were assaulted in 2001, 18 of which were assaulted with weapons such as vehicles, firearms, blunt objects or personal weapons. Customs officers also accounted for 52 out of 84 Treasury Department officers injured in the line of duty in 2001, nearly 62 percent. In recognition of the kind of work they were asked to perform, both the Department of Treasury and the Customs Service included Customs Inspectors and Canine Enforcement Officers as law enforcement officers when these statistics were compiled for the 2001 FBI Uniform Crime Report.

Inspectors and CEOs are currently required to undergo nine weeks of basic training at the Federal Law Enforcement Training Center in Glynco, Georgia. In the near future, basic training for DHS inspectional personnel is anticipated to increase to 15-20 weeks when all DHS inspectional training is integrated into one border inspector curriculum. The current training includes criminal law, arrest authority and arrest procedures, search and seizure authority and techniques, self-defense tactics, frisk and pat-down procedures, handcuffing and take-down techniques, anti-terrorism, and firearms use. In addition, all Customs Inspectors and CEOs are issued firearms to protect themselves, their fellow Inspectors, and the public. The decision to require firearms was the agency's necessary response to the constant threat of violence faced by Inspectors in the performance of their duties at all ports. Currently, all Customs Inspectors and CEOs are required to qualify on a firing range at least three times a year.

Training is a matter of life or death for Customs officers, all of whom must be ready to confront armed and hostile travelers and desperate felons and fugitives. Twenty-four Customs

Inspectors have been killed in the line of duty. According to the agency, Inspectors and CEOs have been shot, stabbed, assaulted with blunt objects and threatened. Terrorists, drug smugglers and fugitives do not hesitate to use violence to avoid being caught and arrested.

Customs Inspectors are also responsible for working with the Treasury Enforcement Communications System (TECS), which is connected to the National Crime Index Center computer. TECS lists warrants for people who are wanted by federal, state and local law enforcement agencies as well all terrorist watch lists. Inspectors are required to seize these fugitives, who are wanted for such crimes as murder, robbery or rape, in addition to drug smuggling. Inspectors must detain these fugitives until they are transported to jail.

Not many people recognize the sacrifices that Inspectors and Canine Enforcement Officers make for the CBP. Their lives are controlled by their jobs. They rarely work regular 9-5 schedules and they have little control over the schedules they do work in any given two-week period. Staffing levels are not adequate to meet the needs of most ports, so Inspectors are frequently asked to work on their days off or to work beyond their regular shifts. The constant strain of performing dangerous, life-threatening work on an irregular and unpredictable schedule has a profound impact on the health and personal lives of many Inspectors and CEOs. They must maintain control and authority, sometimes for 16 hours a day, knowing that a dangerous situation could arise at any moment.

Finally, and most importantly, Customs Inspectors and Canine Enforcement Officers are also the first line of defense against terrorism. Many airports have elaborate anti-terrorist plans

in place, and Inspectors work side-by-side with Customs Agents, FBI Agents and other police to carry out contingency plans. Inspectors take the lead in boarding suspicious flights, searching the plane, and looking for stowaways. In these tense situations, fraught with danger, Customs Inspectors are the only enforcement personnel who are not covered by the twenty-year retirement provisions of section 8336(c)(1) of Title 5.

COST ANALYSIS

One of the arguments that has been used in the past to deny granting early retirement to these officers is the cost. There is no doubt that extending law enforcement officer status to additional federal employees will involve substantial costs. NTEU strongly believes that the costs are easily outweighed by the benefits to the officers, their families, and the American public. No one could reasonably dispute the importance of the work done by these law officers.

Given the significance of these jobs, it is vitally important for Customs to be competitive with other state and local law enforcement agencies in the recruitment and retention of first-rate personnel. Yet we know that the combination of low starting salaries and second-rate retirement benefits does not always attract the best candidates for these difficult, dangerous and essential jobs. Recruitment and retention of capable personnel was a preeminent consideration behind Congress' establishment of the twenty-year retirement option for other law enforcement officers and firefighters. NTEU believes the same compelling reason exists here.

Newer hires to CBP are highly susceptible to the pull of twenty-year retirement benefits and higher salaries offered by state and local law enforcement agencies. They have received

costly training and on-the-job experience within CBP, but they know they deserve to be rewarded for the dangers and risks they are exposed to every day. All too often, talented young officers treat Customs as a stepping-stone to other law enforcement agencies with more generous retirement benefits. One only has to look at the number of Customs personnel lost to the Air Marshal program during the last few years because of the benefit of twenty-year retirement. When this occurs, both CBP and the wars on terrorism and drugs suffer as a result.

While NTEU believes that the benefits of a twenty-year retirement clearly outweigh the costs, there are certainly ways to ease the financial burden to these agencies and the taxpayers. These options include a phase-in period for the retirement eligibility, or the mandatory retirement age. The Subcommittees could devise a twenty-year retirement package for CBP much like that received by Members of Congress and air traffic controllers, who also benefit from a twenty-year retirement.

ONE FACE AT THE BORDER

In 2003, the Department of Homeland Security (DHS) announced the creation of a new Customs and Border Protection Officer (CBPO) position and the “One Face at the Border” initiative. Under this plan, a new position, the CBPO, would combine the duties of legacy inspectors from Customs, the Immigration and Nationalization Service (INS) and the Animal and Plant Health Inspection Service (APHIS) into a single front-line border security position. This is being put into effect at all international airports.

Essentially, the “One Face at the Border” initiative was aimed at unifying the inspection process that travelers entering the United States have to go through. Instead of making three stops – an Immigration Inspector, a Customs Inspector and an Agriculture Inspector – travelers would meet with a single primary inspections officer who was specially trained to do the job of all three.

Unfortunately, this has not been the case. Combining the border protection responsibilities that were held by three highly-skilled specialists into a “super inspector” has severely undermined effectiveness at CBP.

Until 2003, each of the job responsibilities that were held by three legacy inspection agencies was highly specialized and distinct. DHS created the CBPO position with the assumption that the basic skill sets for legacy Customs and INS inspectors are similar. They are not.

Prior to the creation of the CPBO position, legacy Customs inspectors received 9 to 12 weeks of intensive basic training on Customs Service rules and regulations alone. Now, new CBPOs receive only 14 weeks of training for all Customs, INS and APHIS rules and regulations. Transitioning CBPOs receive no new intensive cross-training, but instead are given a CD-ROM and on-the-job training. This may work as far as primary inspections are concerned. However, it is in secondary inspections where expertise is needed. When faced with a complicated VISA entry or customs situation at an airport or land border primary inspection station, there is now a lack of expertise and training to perform an intensive secondary inspection where experienced

legacy INS and Customs inspectors could in the past make a determination as to the validity of a particular document or cargo manifest.

Consolidating these three organizations has caused logistical and institutional chaos and has taken attention away from critical homeland security priorities. It is true that all three of these organizations deal with front line border and port security, but they do so in very different capacities.

NTEU members, working on the frontline of border security, know that, as currently implemented, the “One Face at the Border” initiative is not achieving the national security mission envisioned by its authors. At a minimum, a detailed, independent review of the “One face at the Border” initiative must be done. I would recommend legislation requiring such a review.

CONCLUSION

NTEU is convinced that CBP Officers should receive the same early retirement benefits as those enjoyed by other federal law enforcement personnel. When law enforcement officers from different agencies join forces on a drug raid or to search a plane for criminals, Customs officers are often the only law officers on the scene who are not eligible for early retirement. They all face the same dangers and the risk of death or injury, but they don’t all have the same rights and benefits. We also believe that adequate staffing is essential if we are to have the

security at our airports we all expect and that the “One Face at the Border” initiative is deeply flawed.

CBP officers put their lives on the line every day to serve the American people. The work they do is as dangerous as it is important. In the course of fighting the wars on terrorism and drugs, these men and women have been beaten, kicked, stabbed, and dragged; some have been killed. They are part of the family of law enforcement officers across this nation who put themselves in harms way to uphold the laws passed by this Congress. They are subject to the same dangers, meet the same rigorous job standards, and rely on the same investigative skills and techniques as other law enforcement officers who enjoy the benefits of twenty-year retirement. Common sense demands an end to this inequity.

Thank you for the opportunity to be here today on behalf of NTEU and its 155,000 members to discuss these extremely important federal employee issues.